

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

FILED
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U.S. DISTRICT COURT
DISTRICT OF MASS.

ANTHONY P. SCAPICCHIO
Plaintiff

v.

MOUNT AUBURN PROFESSIONAL
SERVICES, MOUNT AUBURN HOSPITAL,
as administrator of the Mount Auburn Hospital
Retirement Plus 403(b) Plan, and THOMAS
FABIANO
Defendants

CIVIL ACTION NO. 04-11573-RWZ

**DEFENDANTS' MOTION TO STRIKE CERTAIN PARAGRAPHS OF THE
AFFIDAVIT OF ANTHONY P. SCAPICCHIO**

Defendants move to strike paragraphs 9, 10, 13, 19, 20, 21, 22, 23, 24 of the Affidavit of Anthony P. Scapicchio for the reasons set forth in the defendants' opposition to plaintiff's motion for summary judgment and the supplemental affidavit filed by defendants in support of their opposition and further defendants state in support of the motion to strike as follows:

1. With respect to paragraph 9 of the affidavit, Scapicchio's "role in developing the Retirement Plan" is irrelevant in determining his eligibility for benefits pursuant to 29 U.S.C., § 1132(a)(1)(B).

2. With respect to paragraph 10 of the affidavit, Scapicchio's statement of what he considered the "intent" of the plan is irrelevant.

3. With respect to paragraphs 13, 19, 20, 21, 22, 23, and 24, Nancy Stryker was not the plan fiduciary nor the plan administrator and had no authority to bind the plan or to amend or modify the provisions of the plan.

MOUNT AUBURN PROFESSIONAL
SERVICES, MOUNT AUBURN HOSPITAL,
as the administrator of MOUNT AUBURN
HOSPITAL RETIREMENTPLUS 403(b) PLAN
and THOMAS FABIANO
By their Attorneys,



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